IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3586 OF 2003

IN

SUIT NO.561 OF 1981

1. The Union of India & another. ...Plaintiffs.

vs.

1.M/s.Panamarine Shipping Corporation & another. ...Defendants.

Mr.Vijay Sankpal i/b. A.D.Kango, for Plaintiffs.

Ms.N.S.Somnani i/b. M/s.Bhatt & Saldhana, for Defendant no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 12th January, 2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiffs for restoration of the suit which has been dismissed for default. It appears from the record that the suit was dismissed for default on 26.9.2003 when it was fixed by the Court for recording of evidence. The matter

was appearing on board of the Court for recording of evidence earlier, but it reached on 26.9.2003. The plaintiffs were absent, therefore, it was dismissed for default. It appears from the record that the matter was on board on 27.11.2001, none appeared for the plaintiffs, and therefore, the Court has directed that the matter should be placed on board under the caption "dismissal". Accordingly, it is listed before the Court on 3.12.2004 under the caption "dismissal". On that day none appeared for the plaintiffs, therefore, it was dismissed for default. The Court however on the application made by the plaintiffs, has restored the suit to file. It appears from the record of the Court that then it was again dismissed on 26.9.2003. The notice of motion was taken out for restoration of that suit i.e. this notice of motion. But when it was called, again none appeared for the plaintiffs and therefore, that notice of motion was dismissed for default. Therefore, another notice of motion was taken out for restoration of that notice of motion. That notice of motion was granted by the Court subject to payment of cost of Rs.2500/-

2. In the affidavit filed in support of the notice of motion, the fact that the suit was earlier also dismissed for default is suppressed, the fact that the suit was appearing on the board of the Court for recording of evidence even prior to September,2003 is also suppressed. The affidavit does not disclose as to why if the person who has sworn

the affidavit was regularly watching the board, he did not make inquiry immediately after 25.9.2003 and waited till December,2003 to find out as to why the matter is not appearing on the board. The conduct of the plaintiffs during the pendency of the suit in the matter of prosecution of the suit and the affidavit filed in support of the notice of motion are totally unsatisfactory. Therefore, I put it to the learned Counsel appearing for the plaintiffs whether he is willing to pay substantial cost to the defendants. But the learned Counsel stated that he is not willing to pay cost to the defendants. Taking overall view of the matter therefore, in my opinion, it will not be in the interest of administration of justice to keep such civil suit pending. The notice of motion is therefore, disposed of.